IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

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| THE STATE OF ARIZONA, | ) | |
| | ) | 2 CA-CR 2006-0143 |
| Appellee, | ) | DEPARTMENT B |
| | ) | |
| v. | ) | MEMORANDUM DECISION |
| | ) | Not for Publication |
| JIM DALE CALHOUN, | ) | Rule 111, Rules of |
| | ) | the Supreme Court |
| Appellant. | ) | |
| | ) | |

APPEAL FROM THE SUPERIOR COURT OF GILA COUNTY

Cause No. CR20040711

Honorable Edward L. Dawson, Judge

AFFIRMED

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Terry Goddard, Arizona Attorney General
By Randall M. Howe and Julie A. Done — Phoenix
Attorneys for Appellee

Emily Danies — Tucson
Attorney for Appellant

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E C K E R S T R O M, Presiding Judge.

**¶1** Appellant Jim Calhoun was convicted after a jury trial of three counts of sexual conduct with a minor under the age of twelve and three counts of child molestation, all dangerous crimes against children. He was sentenced on two of the sexual conduct charges to concurrent terms of life imprisonment. On the remaining counts, he was sentenced to a combination of concurrent and consecutive, presumptive terms resulting in an additional thirty-seven years' imprisonment. He argues the trial court erred in denying his motion to suppress his confession, contending it was involuntary. In the alternative, he contends that the trial court erred in failing to suppress portions of the confession because they lacked a *corpus delicti*. For the following reasons, we affirm his convictions.

**MOTION TO SUPPRESS**

**¶2** When we review a trial court's denial of a motion to suppress evidence, we generally consider only the evidence presented at the suppression hearing. *State v. Spears*, 184 Ariz. 277, 284, 908 P.2d 1062, 1069 (1996). When the defendant renews his motion to suppress during trial, however, we may also consider evidence presented at trial. *See State v. Strayhand*, 184 Ariz. 571, 583 n.3, 911 P.2d 577, 589 n.3 (App. 1995) (considering trial record on review of denial of motion to suppress confession as involuntary despite defendant's failure to renew motion at trial). In addition, "we defer to the trial court's factual findings, but we review *de novo* mixed questions of law and fact and the trial court's ultimate legal conclusion." *State v. Wyman*, 197 Ariz. 10, ¶ 5, 3 P.3d 392, 395 (App. 2000). Approximately three years after Calhoun's granddaughter, M., had stayed with him

in Payson, Arizona, she told her mother Calhoun had raped her during that stay. M. was four years old when she had stayed with Calhoun. She was interviewed by a detective in her hometown in Washington, and the detective's report of the interview was sent to Detective Matthew Van Camp of the Payson Police Department.

**¶3** In response to the allegations, Van Camp contacted Calhoun and set up an interview, telling Calhoun he was investigating an incident involving his granddaughter. At the beginning of the interview, Van Camp asked Calhoun to provide some background information and then told Calhoun that he was free to leave at any time. Van Camp asked Calhoun what Calhoun thought M. had been reporting to police. After Calhoun talked about M.'s visit and how delightful she was, he became silent. Van Camp told Calhoun that his answers would be very important because this was "a very serious matter with M[.]." Then the detective said, "Honesty is probably going to be your best policy today. . . . You're 69 years old and I want to help you through this. You don't seem like a bad person, but there is obviously some reason why this has occurred with M[.] and I'd like you to tell me about it."

**¶4** After Calhoun discussed M.'s visit further without disclosing any sexual contact, Van Camp commented that it was obvious Calhoun loved M. a lot. Van Camp then told Calhoun that he had asked him to come to the station because he did not want to embarrass Calhoun in front of his neighbors by having the police at his house. Van Camp

again told Calhoun that he wanted "to get [Calhoun] help to work through this problem" and that, just like in any case, Calhoun's honesty would "help [Calhoun] through this."

**¶5** When Van Camp asked Calhoun to explain his view of appropriate contact between him and his granddaughter, Calhoun asked if he needed an attorney to be present. Van Camp responded that it "was totally up to [him], but honesty is going to help this case." Calhoun asked, "In what respect?" Van Camp replied, "I know you touched M[.] inappropriately in a sexual manner. Okay. I know that's a fact, but I wanted to give you the opportunity so I could help you." Calhoun then asked, "So where does it go from here?" Van Camp replied, "What I do is, once we're done talking, you're going to go home. I'm going to write a police report and I'm going to send it to the agencies involved and then the county attorney will review it and determine what, if anything, happens." Calhoun asked what the prospects were, and Van Camp explained that the county attorney has a lot of options from choosing not to prosecute to offering a plea bargain to taking charges to a grand jury.

**¶6** Van Camp again stated he wanted to help Calhoun "through this" and suggested he could secure counseling for Calhoun. When Van Camp eventually asked how the relationship had turned into something sexual, Calhoun confessed to fondling M. Calhoun stated that the fondling had then occurred numerous times throughout the visit, but he would not say how many times or whether it had happened daily. He denied ever penetrating her vagina with his penis or a finger, but admitted performing oral sex on M.

Near the end of the interview, Van Camp asked Calhoun if counseling would help him. Calhoun rejected the need for counseling.

**¶7** Van Camp's supervisor, Sergeant Tieman, had been listening to the interview in another room. He told Calhoun he also had some questions and read Calhoun a *Miranda*[1] advisory. After confirming some statements Calhoun had given to Van Camp, Tieman told Calhoun that, although Van Camp had told Calhoun he could go home at the end of the interview, he would be arrested instead. Even after receiving this information, Calhoun continued to answer Tieman's questions about the sexual incidents with M. After his arrest, the state charged Calhoun with eight counts of child molestation and sexual conduct with a minor. Calhoun moved to suppress his confession. The trial court denied the motion, finding the officers' alleged promises had not induced Calhoun's confession, his will had not been overborne, and considering the totality of the circumstances, his confession had been voluntary. Calhoun renewed his motion to suppress his confession at the close of the state's evidence and the trial court again denied it. A jury found Calhoun guilty of six of the counts and this appeal followed.

**¶8** Calhoun argues the trial court erred by denying his motion to suppress the confession he made to Van Camp, claiming it "was induced by promises upon which he relied." He contends he was promised "help" by Detective Van Camp as well as a promise to go home in return for his statements, and therefore, his "will was overborne by the

[1]*Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966).

machinations of the police." We will not disturb a trial judge's determination that a confession was voluntary absent "clear and manifest error." *State v. Knapp*, 114 Ariz. 531, 538, 562 P.2d 704, 711 (1977). "In determining the voluntariness of a confession, the trial court must look to the totality of the circumstances surrounding the confession and decide whether the will of the defendant has been overborne." *State v. Hall*, 120 Ariz. 454, 456, 586 P.2d 1266, 1268 (1978). Part of a court's voluntariness determination "includes the question of whether a promise was made and if so, whether the confession was a result of that promise." *State v. Ferguson*, 149 Ariz. 200, 207, 717 P.2d 879, 886 (1986); *accord State v. Amaya-Ruiz*, 166 Ariz. 152, 165, 800 P.2d 1260, 1273 (1990).

**¶9** Even assuming that some or all of the statements in question could be characterized as promises, the record clearly supports the trial court's conclusion that Calhoun did not rely on any of those promises when he confessed. For the most part, Van Camp made vague assertions about helping Calhoun,[2] and Calhoun only once asked Van Camp to be more specific about one of his vague assertions. And when Van Camp

[2]Although it was clearly argued below, the trial court did not address in its minute entry Van Camp's offers to help Calhoun. Rather, the court focused on Van Camp's statement that Calhoun could go home after the interview. However, neither party points out this omission, and in the absence of any contrary evidence, we presume the trial court considered those offers when evaluating whether, under the totality of the circumstances, Calhoun's confession was voluntarily given. *See State v. Jessen*, 134 Ariz. 458, 460, 657 P.2d 871, 873 (1982) (trial judge making voluntariness determination need not make formal findings of fact, but conclusion "'must appear from the record with unmistakable clarity'"), *quoting Sims v. Georgia*, 385 U.S. 538, 544, 87 S. Ct. 639, 643 (1967); *see also State v. Howland*, 134 Ariz. 541, 546, 658 P.2d 194, 199 (App. 1982) (finding confession voluntary implicit in finding appellant knowingly and voluntarily waived rights).

responded with another vague offer to "help" Calhoun after stating he knew Calhoun had "touched M[.] inappropriately in a sexual manner," Calhoun did not ask for clarification of the kind of help that was at stake, and Van Camp did not elaborate. The only specific benefit Van Camp arguably offered in connection with these vague assertions was counseling. But, after Calhoun confessed and Van Camp asked if counseling would help him, Calhoun declined the offer. Therefore, Calhoun could not have relied on Van Camp's statements about counseling when he confessed.

**¶10** Nor do we agree that Van Camp's statements that honesty was Calhoun's "best policy" can be characterized as an implied promise of leniency in return for a confession. *See Amaya-Ruiz*, 166 Ariz. at 165, 800 P.2d at 1273 ("mere exhortations to tell the truth" not promises). To the contrary, Van Camp squarely told Calhoun that he did not know what would happen in the case after he filled out his police report and sent it to the prosecutor's office and that the prosecutor had a full range of options to pursue. *See State v. Walton*, 159 Ariz. 571, 579, 769 P.2d 1017, 1025 (1989) (officer's statement "to lie isn't going to help" constituted mere opinion and advice, not a promise implicating Fifth Amendment rights). In light of that information, Calhoun could not have fairly understood Van Camp's encouraging Calhoun to be honest as a promise of leniency, nor could he have relied upon it as such. *See State v. Lacy*, 187 Ariz. 340, 347, 929 P.2d 1288, 1295 (1996) (to render confession involuntary, defendant must have "justifiably relied on any assurances he obtained").

**¶11** Similarly, the record supports the trial court's conclusion that Calhoun did not rely on Van Camp's statement that Calhoun would be going home after the interview. In context, it is clear that Van Camp simply explained the standard procedure to Calhoun in responding to Calhoun's question, "So where does it go from here?" Van Camp never conditioned Calhoun's going home after the interview on what Calhoun said or did. Rather, Van Camp simply stated that when they were finished talking, Calhoun would go home. Therefore, Calhoun could not have been induced into confessing by Van Camp's statement. In fact, after telling Calhoun he would be going home, Van Camp continued to explain that he would give any information he discovered to his superiors and to the county attorney's office who would decide what would happen, including the possibility charges would be brought. Therefore, even if Calhoun believed his confession would not result in his arrest that day, he was not led to believe he would never be arrested as a result of his statements. And Calhoun continued to make inculpatory statements to Tieman even after he knew he was not going home, which further supports the trial court's conclusion Calhoun did not rely on the statement when he confessed.

**¶12** Although there is little doubt Van Camp utilized a variety of strategies to create a psychological environment conducive to Calhoun's confessing—including making arguably misleading observations[3]—such strategies are permissible law enforcement

[3]Obviously, the detective was aware that his offers to provide Calhoun counseling, while not constituting a promise, could be initially misinterpreted as a suggestion that Calhoun's crimes might be addressed by counseling rather than a criminal prosecution

techniques in the absence of any coercion or promises conditioned on a defendant's agreement to make a statement. *See Walton*, 159 Ariz. at 579, 769 P.2d at 1025 (police may use "psychological tactics" less egregious than promises or threats to obtain confessions). For the foregoing reasons, we find no error in the trial court's determination that Calhoun's confession was voluntary.

### *CORPUS DELICTI*

**¶13** Calhoun argues the trial court erred when it denied his motion to redact his statements about oral sex from his confession. He contends that, because M. denied any oral contact, his confession to those acts was uncorroborated, and therefore, the state lacked sufficient proof of the *corpus delicti*. We review a trial court's ruling on the sufficiency of evidence of *corpus delicti* for an abuse of discretion. *State v. Morgan*, 204 Ariz. 166, ¶ 14, 61 P.3d 460, 464 (App. 2002). The *corpus delicti* rule provides that, before a defendant's confession may be admitted as proof of a crime, the state must show independent evidence a crime was committed and someone is responsible for it. *State v. Nieves*, 207 Ariz. 438, ¶ 7, 87 P.3d 851, 853 (App. 2004). The state's independent proof may be direct or circumstantial and need only establish a reasonable inference that the crime charged was actually committed. *Id*. ¶ 8.

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resulting in incarceration. We can also presume that Van Camp, as a sex crimes detective, was aware that honesty might not be the "best policy" for Calhoun, given that Calhoun's confession to sexual conduct with M. would likely ensure he would be convicted of crimes requiring lengthy prison terms.

**¶14** Here, the state presented independent evidence of sexual contact, but not of oral sexual contact. M. testified Calhoun had fondled her several times a day. She also testified in detail how he penetrated her vagina with his penis, although she used terms such as "private part" and "where he uses the bathroom." However, she testified he never used his mouth or anything other than his hands or penis to touch her.

**¶15** This court has recognized an exception to the *corpus delicti* rule """where an accused is charged with more than one crime, and the accused makes a statement related to all the crimes charged, but the prosecution is only able to establish the corpus delicti of one of the crimes charged."""" *Morgan*, 204 Ariz. 166, ¶ 20, 61 P.3d at 466, *quoting Commonwealth v. Bardo*, 709 A.2d 871, 874 (Pa. 1998), *quoting Commonwealth v. Verticelli*, 706 A.2d 820, 823 (Pa. 1998), *abrogated on other grounds by Commonwealth v. Taylor*, 831 A.2d 587 (Pa. 2003). In those cases, if """the relationship between the crimes is sufficiently close so that the introduction of the statement will not violate the purpose underlying the corpus delicti rule, the statement of the accused will be admissible as to all the crimes charged."""" *Id., quoting Bardo*, 709 A.2d at 874, *quoting Verticelli*, 706 A.2d at 823.

**¶16** The trial court denied Calhoun's motion to redact the confession, finding the facts and circumstances in *Morgan* were "on all four[s]" with this case and concluding there was independent evidence Calhoun committed other sexual crimes on M. *See id.* ¶ 23 (although no independent evidence corroborated defendant's confession of oral sex,

"[i]ndependent evidence established the commission of several sexual crimes closely related to the sexual conduct"sufficient to prove *corpus delicti*). We agree.

**¶17** The purpose of the *corpus delicti* rule is to prevent the use of an untrustworthy confession obtained because of a defendant's "'mental instability or improper police procedures.'" *State v. Rubiano*, 214 Ariz. 184, ¶ 7, 150 P.3d 271, 273 (App. 2007), *quoting State ex rel. McDougall v. Superior Court*, 188 Ariz. 147, 149, 933 P.2d 1215, 1217 (App. 1996); *accord Morgan*, 204 Ariz. 166, ¶ 16, 61 P.3d at 464. We have already concluded the trial court did not err in finding Calhoun had voluntarily confessed and that his will had not been overborne by improper police tactics. Calhoun confessed to multiple, closely related crimes arising from continuous, repetitive sexual contact with M., and some of those crimes were corroborated by independent evidence. Therefore, the trustworthiness of Calhoun's entire confession was bolstered, and the purpose of the *corpus delicti* rule was not violated, by the use of his confession to prove oral sexual contact, a physical act not otherwise proved with independent evidence. *See Morgan*, 204 Ariz. 166, ¶ 19, 61 P.3d at 465 (approving proposition that "'strict and separate application of the corpus delicti rule to each offense adds little to the ultimate reliability of the confession'" when "'defendant confesses to several crimes of varying severity within a single criminal episode'"), *quoting Willoughby v. State*, 552 N.E.2d 462, 467 (Ind. 1990). Finally, because "only a reasonable inference of the corpus delicti must exist, [and] it need not be proven beyond a reasonable doubt before the confession may be considered," *State v. Janise*, 116 Ariz. 557, 559, 570

P.2d 499, 501 (1977), we conclude the application of the closely related crimes exception is especially appropriate to Calhoun's confession that he had oral sex with M. *See People v. Jones*, 949 P.2d 890, 902-04 (Cal. 1998) (oral copulation case cited with approval in *Morgan* where no independent proof of oral contact, holding "minimal" evidence needed to corroborate confession did not require "independent evidence of every physical act constituting an element of the offense").

**¶18** M. testified in detail about the sexual contact that occurred between her and Calhoun during her stay. M.'s mother also testified that M. told her she was raped by Calhoun. And M. made statements of the same nature to the detective in Washington that led Van Camp to investigate Calhoun. We have found such victims' statements sufficient to corroborate a confession for the purpose of proving *corpus delicti*. *See State v. Sabin*, 213 Ariz. 586, ¶ 33, 146 P.3d 577, 586-87 (App. 2006) (*corpus delicti* proved by confession corroborated by victim's hearsay statements to friends that she had been sexually abused by her father); *State v. Melendez*, 135 Ariz. 390, 394, 661 P.2d 654, 658 (App. 1982) (child victim's testimony sufficient independent evidence to establish elements of "her age and the touching of the private parts" of child molestation charge); *see also Rubiano*, 214 Ariz. 184, n.3, 150 P.3d at 275 n.3 (holding *corpus delicti* rule not applicable when defendant pleads guilty but noting victim's later-recanted statements that defendant had sexually abused her were "independent evidence that a crime had been committed and that someone, specifically [defendant], was culpable"). Because numerous other related sexual

acts that Calhoun confessed were corroborated by M.'s statements, we find no abuse of discretion in the trial court's conclusion that here, as in *Morgan*, "the confession was sufficiently corroborated to eliminate any concern that it could be untrue and, thus, supported a 'reasonable inference' that the offense had occurred." 204 Ariz. 166, ¶ 23, 61 P.3d at 466, *quoting Janise*, 116 Ariz. at 559, 570 P.2d at 501.

**¶19** For the foregoing reasons, we conclude the trial court did not err in admitting Calhoun's entire confession as evidence at trial, and we affirm his convictions and sentences.

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PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

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J. WILLIAM BRAMMER, JR., Judge

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PHILIP G. ESPINOSA, Judge